



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
309**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: IMPACT OF THE WORKERS' COMPENSATION ACT ON FEHA WORK-RELATED DISABILITY COMPLAINTS**
2. **PURPOSE:** To set forth the procedures for processing Fair Employment and Housing Act (FEHA) work-related disability cases in light of challenges that the Workers' Compensation Act preempts the FEHA.
3. **BACKGROUND:** Respondents frequently challenge the Department's jurisdiction over disability complaints when the disability stems from a work-related injury. Such challenges assert that the FEHA is preempted by the exclusive remedy provisions of the Workers' Compensation Act (WCA), Labor Code section 132, subdivision (a). However, the California Supreme Court has ruled that the Workers' Compensation Act does NOT preempt the FEHA (City of Moorpark v. Superior Court of Ventura County, (1998), 18 Cal.4th 1143, 77 Cal.Rptr. 2d 445).
4. **PROCEDURES:**

A. Intake Guidelines:

During the intake interview, Consultants will ask all complainants who allege disability discrimination whether the alleged disability is a result of an on-the-job injury and is, therefore, work-related, if the response is yes, complainants will be asked whether they have filed a Workers' Compensation claim. If the response is no, they should be referred to the Workers' Compensation Appeals Board and given the address and telephone number of the local office. The Consultant should also inform complainants that some of the remedies available through the FEHA and the WCA may overlap and that they will not be able to claim "double" remedies. They should also be advised that they may want to consider seeking legal counsel regarding this issue. The above information will be documented in the intake notes.

B. Investigation Guidelines:

Consultants will:

- 1) Investigate such cases in accordance with standard case processing procedures.
- 2) Respond to WCA preemption challenges by articulating the Department's position that FEHA work-related disability complaints are not preempted by the WCA based on the Supreme Court decision in City of Moorpark.

5. APPROVAL:

Nancy C. Gutierrez, Director

Date